COLLECTOR OF STAMP DUTIES v. NG FAH IN & ORS.

[F.C. (Suffian L.P., Chang Min Tat & Abdul Hamid F.JJ.) December 9, 1980 & January 20, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 206 of 1979]

Revenue Law — Stamp Duty — Memorandum of transfer — Market value of land — Principles when reviewing conclusion of judge — Stamp Duty Ordinance, 1949, s. 12A.

In this case the first respondent sold certain land in Temerloh, Pahang to the other respondents for $20,000 ($1,958.38 per acre) and the memorandum of transfer was sent to the Collector of Stamp Duty, Temerloh for stamping. The Collector refused to accept the consideration stated in the transfer as the value of the land and he sent it to the Valuation Officer in Temerloh for an inquiry and report. The Valuation Officer gave the value of the land as $12,000 per acre or $122,600 in all. Following this report the Collector of Stamp Duty decided that the *ad valorem* duty payable should be based on $122,600 and that the stamp duty payable was $1,452. The respondents asked the Collector to state a case for the opinion of the High Court. The learned judge of the High Court after taking evidence and considering the submissions of counsel, held that the value of the land was only $3,000 per acre and that the duty due was accordingly to be reduced and the excess to be refunded. The Collector of Stamp Duties appealed.

Held: the learned judge had not acted on any wrong principle of law nor misapprehended the facts nor made a wholly erroneous estimate of the value of the land and therefore the Federal Court could not interfere with his valuation.

Cases referred to:-

(1) *L.A.O.* v. *Venkateswami* (1967) 1 An. W.R. 79.

(2) *Nanyang Manufacturing Co.* v. *C.L.R. Johore* [1954] M.L.J. 69.

(3) *Bertam Consolidated Rubber Co. Ltd.* v. *Deputy Collector of Land Revenue, Butterworth* [1965] 1 M.L.J. 171.

(4) *Davies* v. *Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.

(5) *Flint* v. *Lovell* [1935] 1 K.B. 354.

The following case was also cited in argument: *C.L.R. Kuantan* v. *Noor Chahaya* [1979] 1 M.L.J. 180.

HIGH COURT.

Mahinder Singh for the applicants.

Zulkifli bin Ahmad Makinuddin (Senior Federal Counsel) for the respondent.

Abdul Razak J.: This appeal from the Collector is made under section 39(1) of the Stamp Ordinance. The appellant is dissatisfied with the Collector's assessment on the stamp duty chargeable under the memorandum of transfer.

The method of valuation is determined in accordance with section 12A which states as follows: —

"For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be —

(a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement; or

(b) the market value, as on the date of execution, of the property transferred or settled,

whichever be the greater:

Provided that the officer before whom the instrument of transfer is tended for registration may accept the consideration mentioned herein as being the market value, unless he shall have reason to believe otherwise."

The subject-matter of the conveyance is Lot 2450 Mukim of Perak, District of Temerloh. The amount of the consideration was $20,000. The Collector had, however, assessed the duty based on the market value of the land at $122,600 i.e. at $12,000 per acre and assessed the stamp duty at $1,452. The applicants contend that the duty should be based on the consideration as declared by the parties in the transfer at $20,000. The Collector, however, says that since the market value is greater than the amount of the consideration, the market value following section 12A should be the value of the property at the time of the transfer. One will notice, however, that there is no definition of what "market value" means in the Ordinance. One would necessarily have to rely on the principle applicable in land acquisition cases for its meaning.

The land is situated approximately 2½ miles by road south-west of Bandar Baru, Temerloh. It is 1½ miles outside the Town Board boundary. The road to the land from Temerloh is via Jalan Bahagia in Bandar Baru, leading to Kampong Kelulut and Bee Yong Estate. The road is metalled for the first 1½ miles and then becomes a made-up gravel road alongside the south of the subject property. The immediate vicinity of the subject lot consists mainly of agricultural land. Kampong Bukit Kelulut is a small village consisting of some 70 kampong houses, a balai raya, a surau and three shophouses. The subject lot is irregular in shape. It is about eight feet below road level. It drops gradually to the back until it reaches a paya. The land is cultivated with old rubber and overgrown with belukar. There are no buildings on the land. There is no electricity and water supply to the immediate vicinity. These are available up to Kampong Bukit Kelulut at the point where the metalled road ends. There is no bus service to the area. The owner has not applied for any permission to develop the land. There is no zoning plan for the area. The proposed Temerloh/Mentakab Highway runs through the centre of the subject property. This fact was known to the public in August 1978 because the J.K.R. had earlier drawn up a tentative alignment. The above facts are given by the government valuer in his report in Bundle A at page 1. It is admitted by the government valuer that the subject land and the adjacent lands are undulating. It is also an uncontroverted fact that all the adjacent lands are agricultural in category. It is also noteworthy that lands directly to the east and opposite the land in question is a Chinese cemetery which may or may not be taken into account for valuation purposes, depending on whether it is accepted that some people are superstitious about staying near a grave. Except for the last, the parties seem to be on common ground on the above facts.

The applicants had through their valuer (PW1) relied on lands in the immediate locality of the subject land as comparables. These lands are tabulated below giving the size, the value per acre and the respective dates of their transaction: —

Lot No.	*Size*	*Value Per Acre*	*Date of Transaction*
2450	10a. 0r. 34p.	$1,175	0.12.1976
1986	12a. 0r. 39p.	2,998	0.10.1977

1985	10a. 3r. 24p.	1,926	0. 3.1977
1982	5a. 3r. 15p.	1,198	0. 7.1976
1981	11a. 0r. 11p.	1,187	0. 3.1977

One will observe, therefore, that the value of these lots range from $1,175 to $2,998 per acre extending from 1976 to 1977. The private valuer had these factors in mind when considering the value of these lots — they were undulating, agricultural, no water and electricity supply along the road, the road unmetalled. The government valuer, however, considers Lots 1896 and 2307 as the proper and fair guide for the value of the subject Lot 2450. Their particulars are set out below: —

Lot No.	*Size*	*Value Per Acre*	*Date of Transaction*
1896	1a. 0r. 30p.	$11,790	0. 8.1977
2307	2a. 0r. 20p.	10,000	0.10.1973

The government valuer accepts these transactions as the best evidence of the value of lands around the area because he says it had been established that Malay Reserve lands are worthless in the market due to their restriction in ownership and the transactions were at arm's length. Consequently, he said, since they can fetch between $10,000 and $12,000 per acre, non-reserve lands would fetch more, *assuming the lands are similar in all respects*. He said this logic is supported by the sale of Lot 2862 (unreserve land) which was sold at almost $12,000 per acre in January 1978. He maintained that the selling prices for Lots 1985, 1982 and 1981 are fictitious because they are low and no land within the radius of three miles of Temerloh town would fetch that low. He goes on to say that the higher land prices can be ascribed to speculation over the Temerloh/Mentakab Bypass. He said he took into account the following considerations in valuing the subject lot: —

(1) The subject lot is comparatively bigger in size;

(2) It is situated away from Kampong Bukit Kelulut and also fronts a gravel road unlike the comparable lands cited by him which are located near to the said kampong and have frontage to the metalled road with water and electricity supply available;

(3) The proposed bypass runs through the lot;

(4) The land is similar in terrain and cultivation to the comparable lots; and

(5) The sale in 1896 by RISDA was at arm's length and serves a very reliable guide.

One would notice two things that these grounds except (3) and (5) are the very reasons given by the private valuer for not accepting the value of 1896 which in all respects is very much superior land. *Aggarawala* Vol. I 4th ed. at page 343 says it is a fallacy to value large areas on the basis of small lots. The subject land is larger by nine acres. 1896 is about one mile from Temerloh town. Since Lot 2450 is one mile from 1896, it follows it is two miles away from town. The subject lot has no water and electricity supply which again is an adverse factor. The government valuer says the proposed bypass passes through the subject lot. One does not know really how this fact makes Lot 2450 worth $12,000 per acre when although the knowledge of the proposed bypass had purportedly been known by the public as early as 1976, it has not affected the value of the subject lot itself because it was still sold in December 1976 at $1,175 per acre and also to lots which were cited by the private valuer as comparables. If the government valuer says the value of the lands in the area had arisen because of the speculation over the Temerloh/Mentakab Bypass, this is certainly not borne out by the sale of Lot 2450 itself and its adjacent lots. Clearly there are other factors which act to suppress their values. As to the fact that the subject lot is similar in terrain as Lots 1896 and 2307, that must surely be, as he himself admits, to the extent of being undulating only, because apparently, apart from that supposed similarity, there is evidently a vast dissimilarity in the terrain of the land. The subject lot is eight feet below the road level and sloping down to a paya. 1896 and 2307, on the other hand, rise up from the road level to high ground at the back. 2450 in other words, is low and swampy. The comparable Lots 1896 and 2307 are high and dry. A distinct superiority of Lots 1896 and 2307 can be seen now since Lot 2307 had been cut and levelled. That would hardly have been possible with the subject lot without having to transport and buy the soil elsewhere. In fact the high land on Lot 2307 and Lot 1896 could clearly be cut and sold.

Why has the government valuer nevertheless given a value for Lot 2450 the same as Lot 1896 and Lot 2307? He said the latter are Malay Reserve lands which generally reflect a low value and because they were fictitiously low in prices whereas the sale of 1891 was at arm's length. Taking the Malay Reservation lands and the low prices issue together since they are corelated, I think it is fallacious to argue that the starting point for the value of the subject land should be the Malay Reservation land merely because they generally reflect relatively low prices compared to non-reserve lands since that would simply be ignoring the fact that other factors may act to influence and inflate the value of Malay Reserve lands which are not present in comparable non-reserve lands in the immediate vicinity of the subject land. Or else an assumption is being made that Malay Reserve lands are incapable of being as valuable or as high in prices as non-reserve lands. But, clearly, looking at the sales of 1896 and 2862, that assumption cannot be true. It is obvious that if the Malay Reserve land is in the vicinity of an area where economically and socially it is better situated than in an area where a non-reserve land is, then these factors would influence to upgrade the value of the Malay Reserve lands. I think that must necessarily be so; otherwise we are devoid of an explanation as to why Lots 1981, 1982, 1985 and 1986 which are unreserved lands had fetched much lower prices than Lots 1896 and 2307. This is all the more so since the fact that these lands had their restriction had not it seems affected the public mind, at least to statutory bodies because the latter were evidently prepared to pay the price for them as if they were without the restriction and as if it is like any other non-reserve land. This seems confirmed by the fact that five months after the transaction of Lot 1896, 2862 (unreserve land) was transacted at $11,852 per acre. Clearly, therefore, it will

be noted that the reason for the disparity in these values between Malay Reserve lands on the one hand, and non-reserve lands in the other lies not in the fact that the prices of the non-reserve subject lot and adjoining lots are supposedly fictitious but in the fact that these two sets of land, although generally are about in the same neighbourhood, are not enjoying the same advantages which is one of the necessary requirements for the validity of comparable sales. As stated in *L.A.O.* v. *Venkateswami*[1] (cited in *Aggarawala* Vol. I 4th ed. p. 339):

"The underlying principle of fixing the market value with reference to comparable sales is to reduce to the minimum the element of speculation. In a comparable sale the features are:—

(1) it must be within a reasonable time of the date of notification (in our case it must necessarily be the date of the transfer);

(2) it should be a bona fide transaction;

(3) it should be a sale of a land acquired or of a land adjacent to the land acquired and

(4) *it should possess similar advantages* (the italics are mine). It is only when all these factors are present that it could merit consideration as a comparable sale."

In what way is the subject land therefore possessing similar advantages as Lots 1896 and 2307 that it should be similarly valued? The circumstances seem clearly however to point the other way round as had been pointed out earlier. When looking at the area as a whole, one cannot but note that the prices of lands had suddenly come down the moment the social services ceased to be provided to them. It seems to be hardly a co-incidence that noticeably lands from the point where the gravel road begins and the metalled road ends which is also the point where water and electricity services cease to be provided show a definite drop in their prices than lots that are before this point, i.e. Lots 2862, 1896 and 2307. If, therefore, Lots 1981, 1982, 1985 and 1986 are seen to be low in value, it must surely be because they are in a locality where the factors which normally have a definite influence on high prices do not exist as they exist on lands in the area of Lots 1896, 2861 and 2307.

I think it is not enough for the government valuer to say that the comparables as used by the private valuer are fictitious and not *bona fide* and not at arm's length. He must go further and prove how and in what way they are alleged to be so. But all he has done is to say that since the Malay Reserve lands are higher in value, therefore the applicants' sales are fictitious. But this is against the known accepted method of testing the *bona fide* of a transaction. *Aggarawala* Vol. I, 4th ed. at page 347 says —

"The price obtained in a particular sale may not be the proper market-value of the property sold. For instance, the sale might have been a forced one, as by an owner in extreme stress of need or pressure, and conversely it might have been to a person to whom the addition of the land gave an enhanced value to his lands, or was of special advantage to him. The sale might have been without proper enquiry, publicity or option of expert values; or it might have been to a person who acted through unreliable agents or intermediaries."

In what way are the applicants' sales been proved, therefore, to apply to the above circumstances as to render them non-*bona fide*? Indeed, it seems to me to be the other way round. We are told by the government valuer himself that it was possible that the purchaser of Lot 1896 being a statutory body was being generous in paying the price which it did. The necessary inference is therefore that the statutory body was either in extreme stress of need of the land or that it was of special advantage to it which made it decide to pay more, which are as laid down earlier objectionable enough for the sale to be rejected, as it would not reflect the true market value. That apart, it seems rather inconceivable that the court should be asked to say that lands directly adjacent to the subject land which possess the same disadvantages should be disregarded in favour of lands a mile away and which do not have the same disadvantages. All things considered, it is difficult to see how anyone can be really convinced that the sale of Lots 1981, 1982, 1985, 1986 and 2450 had been fictitious where not one but five pieces of them had been sold during the years at consistently the same price. As applicants' counsel rightly puts it, which willing buyer is prepared to buy land at $12,000 per acre where next door it is being sold at a price which, at all relevant times, does not exceed more than $3,000 per acre? If there isn't any, then the $12,000 is not the market value of the land since "market value" is the price which a willing seller not obliged to sell, might reasonably expect to obtain from a willing purchaser. (See *Aggarawala* page 326).

In the circumstances, I would hold that the market value of Lot 2450 should be at $3,000 per acre. I would allow the appeal, therefore, and accordingly vary the Collector's order to the extent of that valuation. I would order also costs to be paid to the applicants.

FEDERAL COURT.

Jamil Hajar bin Abdul Mutalib (Senior Federal Counsel) for the appellant.

Mahinder Singh for the respondents.

Suffian L.P. (delivering the judgment of the Court): On August 2, 1978, (the "relevant date") the first applicant sold the land in question to the other three applicants for $20,000 ($1,958.38 per acre); and accordingly they executed a memorandum of transfer. The transfer had to be stamped, so they sent it to the Collector of Stamp Duty, Temerloh, respondent.

If Government had been acquiring the land, probably they would have insisted that the land was worth no more than the price given in the memorandum. But they were not acquiring it; they were interested in the stamp duty payable on the transaction; and the more valuable the land, the bigger the amount of stamp duty payable. Anyway, the Collector of Stamp Duty refused to accept the consideration stated in the transfer as the value of the land; he forwarded it to the Valuation Officer in Temerloh with a request that he enquire and report. He enquired and reported that on the relevant date, the land was worth $12,000 per acre, totalling $122,600.

The relevant section of the Stamp Duty Ordinance is section 12A which provides that stamp duty is based on consideration or market value, whichever is greater. The section reads:

"12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be —

(a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement;

(b) the market value, as on the date of execution, of the property transferred or settled,

whichever be the greater:

Provided that the officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned herein as being the market value, unless he shall have reason to believe otherwise."

Following the report of the Valuation Officer, the Collector decided that the *ad valorem* stamp duty payable should be based on $122,600; not on $20,000, the consideration given in the memorandum. Thus the stamp duty payable according to him was $1,452, not $200 as contended by the applicants. (The amount due has been paid).

The applicants, dissatisfied with the assessment, asked the Collector to state a case for the opinion of the High Court on the value of the land under section 39 of the Ordinance.

After taking evidence and considering counsel's submissions, the learned judge on September 13, 1979, held that the value of the land was only $3,000 per acre and that the duty due was accordingly to be reduced and the excess to be refunded.

The Collector appeals to us.

The question before the learned judge was a simple one: what was the market value of the land on August 2, 1978, the relevant date?

It is common ground that in determining the market value, nowhere defined in the Ordinance, the courts should be guided by the principles that apply under the Land Acquisition Act — namely, market value is the price which a willing seller not obliged to sell, might reasonably expect from a willing purchaser with whom he was bargaining for sale and purchase of the land (*Nanyang Manufacturing Co.* v. *C.L.R., Johore*[2]) and this amount can best be determined by looking at recent sales of comparable lands in the vicinity. The learned judge was aware of this principle. He was also aware of what the attitude of the court should be when considering comparable sales, for he quoted this passage from *L.A.O.* v. *Venkateswami*[1] cited by *Aggarawala*, volume 1, 4th edition, page 339:

"The underlying principle of fixing the market value with reference to comparable sales is to reduce to the minimum the element of speculation. In a comparable sale the features are:

(1) It must be within a reasonable time of the date of notification [in our case, the date of the transfer];

(2) it should be a bona fide transaction;

(3) it should be a sale of the land acquired or of the land adjacent to the land acquired; and

(4) it should possess similar advantages.

It is only when all these factors are present that it could merit consideration as a comparable sale."

How does one test the *bona ides* of a particular sale? The learned judge was aware of the proper test to be applied, for he quoted with approval the following passage from page 347 of the same volume of *Aggarawala* which sets out the test admirably:

"The price obtained in a particular sale may not be the proper market value of the property sold. For instance, the sale might have been a forced one, as by an owner in extreme need or pressure [in which case the price is low], and conversely it might have been to a person to whom the addition of the land gave an enhanced value to his lands, or was of special advantage to him [in which case the price is high]. The sale might have been without proper enquiry, publicity or opinion of expert values [price low]; or it might have been to a person who acted through unreliable agents or intermediaries [price high]."

Now, the land in question is Lot 2450 in the Mukim of Perak in the District of Temerloh, 10 acres 0 rood and 34 poles (10.2125 acres) in area, situated along a laterite road about 2½ miles south-west of Temerloh town. The locality consists mainly of rubber small holdings. Access to the land from town is via a metalled road which ends a short distance beyond Kampong Bukit Kelulut about a mile from the land and which then continues as a laterite road running off the south-western side of the Mentakab-Temerloh main trunk road at the 113th milestone. There is no bus service.

The land is irregularly shaped, with a frontage of about 550 feet onto the laterite road; it is 8 feet below road level and slopes gently towards a paya (swamp) at the back. It is agricultural and planted with old and unmaintained rubber trees and overgrown with bushes and trees.

It is not Malay reservation land.

Piped water and electricity are not available, as they stopped where the metalled road ends some distance away from the land.

Encik Halim bin Othman, a valuer with Messrs. C.H. Williams, Talha & Wong Sdn. Bhd., retained by the applicants, visited the area two years after the relevant date and after studying recent sales of comparable lands in the vicinity, gave it as his opinion that the price stated in the memorandum ($1,958.38 per acre) was reasonable.

As already stated, the Government Valuation Officer, also looked at recent sales of comparable lands in the vicinity and valued the land at $12,000 per acre.

Valuing land is like determining the quantum of damages which a negligent motorist should pay to compensate an injured cyclist. Judges however have to do it, but it is not easy. As regards land valuation, it has been well stated by Hepworth J. at page 176 in *Bertam Consolidated Rubber Co. Ltd.* v. *Deputy Collector of Land Revenue, Butterworth*[3]:

"Valuation [of land] can never be a strictly mathematical process... Rarely is the available evidence [culled from recent transactions in respect of comparable property] overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience."

The learned judge here has gone into this matter thoroughly in light of the evidence and submissions presented before him, as is clear from his long and careful judgment. On what principles may we interfere with his conclusion? Our opinion is that we should follow the principle followed by a Court of

Appeal when reviewing the award of a judge in a running-down case. That principle has been well stated by Lord Wright in his speech at pages 616-617 in *Davies* v. *Powell Duffryn Associated Collieries Ltd.*[4]:

"Where ... the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer L.J. in *Flint* v. *Lovell.*[5] In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these other reasons made a wholly erroneous estimate of the damages suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

Thus, applying the same principle, the questions before us are — has the learned judge acted on a wrong principle, or misapprehended the facts, or has he for some reason made a wholly erroneous estimate of the value of the land? It is not enough if only there is a balance of opinion or preference one way or another; the scale must go down heavily on the ground of insufficiency against the allegedly low value put on the land by the learned judge.

Before us it was stated, first, that the learned judge was wrong in ignoring the sales of Lots 1896 and 2307 in the locality. Lot 1896 was sold on August 17, 1977, to RISDA, for $11,790 an acre, while 10/12ths of Lot 2307 were sold on October 5, 1973, to two Malays, for $10,000 an acre. Both these lots are Malay reservation and it was argued that the land in question, being non-reservation, should be worth more. But these two lots are nearer to Temerloh town and also smaller, rise up from road level to high ground and have water and electricity supply — all factors which tend to make them more desirable and therefore more expensive to buy. Nearness to town and smallness of size, it is well-known, tend to increase the per-acre price of land.

It was also said that the learned judge was wrong in ignoring the price paid ($11,852 per acre) for Lot 2862, between the previous two lots and the lot in question, on March 24, 1978. But here again Lot 2862 is a small lot, being only 1 acre 3 roods and 17 poles in area, and like Lot 1896 it was sold to an organization, the Malay Teachers' Co-operative, and it might be thought that organizations have more money than individuals, and would therefore be more generous with vendors of land.

With respect it seems to us that every point made by both sides was carefully considered by the learned judge. It is unnecessary for us to deal with each of those points *seriatim* ourselves, for that would be repetitious. We would, however, mention that the land in question, though it is well-known that the Temerloh-Mentakab Bypass will eventually pass through it, changed hands two years before (on December 10, 1976) at only $1,175 an area; that Lots 1981, 11.096 acres in area, changed hands on March 3, 1977, at $1,988 an acre; that Lot 1982, 5.844 acres in area, changed hands on July 13, 1976, at $1,445 an acre; that Lot 1985, 10.9 acres in area, changed hands on July 3, 1977, at $1,835 an acre (revalued by the Collector at $1,927 per acre); and that all these lots are much nearer to the applicants' land than the two "comparable" lots No. 1896 and 2307 relied on by the Collector. It is also not without significance that across the way from the land in question is Lot 1987, over 11 acres in area, used as a Chinese cemetery, which, because Malaysians have an understandable aversion to being near ghosts may have a depressive effect on the value of lands in the vicinity.

It is possible that each of us, if we had been the judge at first instance, might have put on the applicants' land a value higher than the $3,000 per acre value put on it here; but that alone is not enough to justify us interfering with Abdul Razak J.'s valuation. The scale must go down heavily against his figure on the ground of insufficiency before we can interfere. In our judgment the scale has not done so. In our judgment the learned judge has not acted on a wrong principle of law, nor misapprehended the facts, nor made a wholly erroneous estimate of the value of this land.

Accordingly we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Mahinder Singh & Co.*

YANG SALBIAH & ANOR. v. JAMIL BIN HARUN

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.J.J.) October 1, 1980 & January 22, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 197 of 1979]

Torts — Negligence — Injured person reduced to vegetative state — Damages — Global award not correct — Award for pain and suffering and loss of amenities — Out of pocket expenses and cost of care — Cost of future care — Loss of future earnings — Damages awarded by trial judge so inadequate as to justify intervention — Interest on damages.

Damages — Traumatic cerebral damage — Mentally retarded — Injured person reduced to vegetative state.

Practice and Procedure — Preparation of appeal record.

In this case the appellant, Yang Salbiah, was run down by a bus and became vegetative. The learned trial judge awarded a global sum of $75,000 as general damages with the "usual" order as to interest and costs. The appellant appealed against the quantum of damages.

Held: (1) the trend of modern authorities is not towards awards of global sums but towards awards under particular heads of claim;

(2) in a case of total or near total incapacity the heads of claim for damages are (a) pain and suffering and loss of amenities; (b) out of pocket expenses up to date of trial; (c) cost of care to date of judgment with interest; (d) loss of earnings to date of judgment with interest; (e) cost of future care and (f) loss of future earnings;

(3) in this case the proper damages to be awarded under the various heads would appear to be (a) $70,000 for pain and suffering and loss of amenities with interest; (b) $500 for out of pocket expenses; (c) $25,362 for cost of future care; and (d) $33,816 for loss of future earnings;